TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921

No. 148

CHARLES S. FAIRCHILD, APPELLANT,

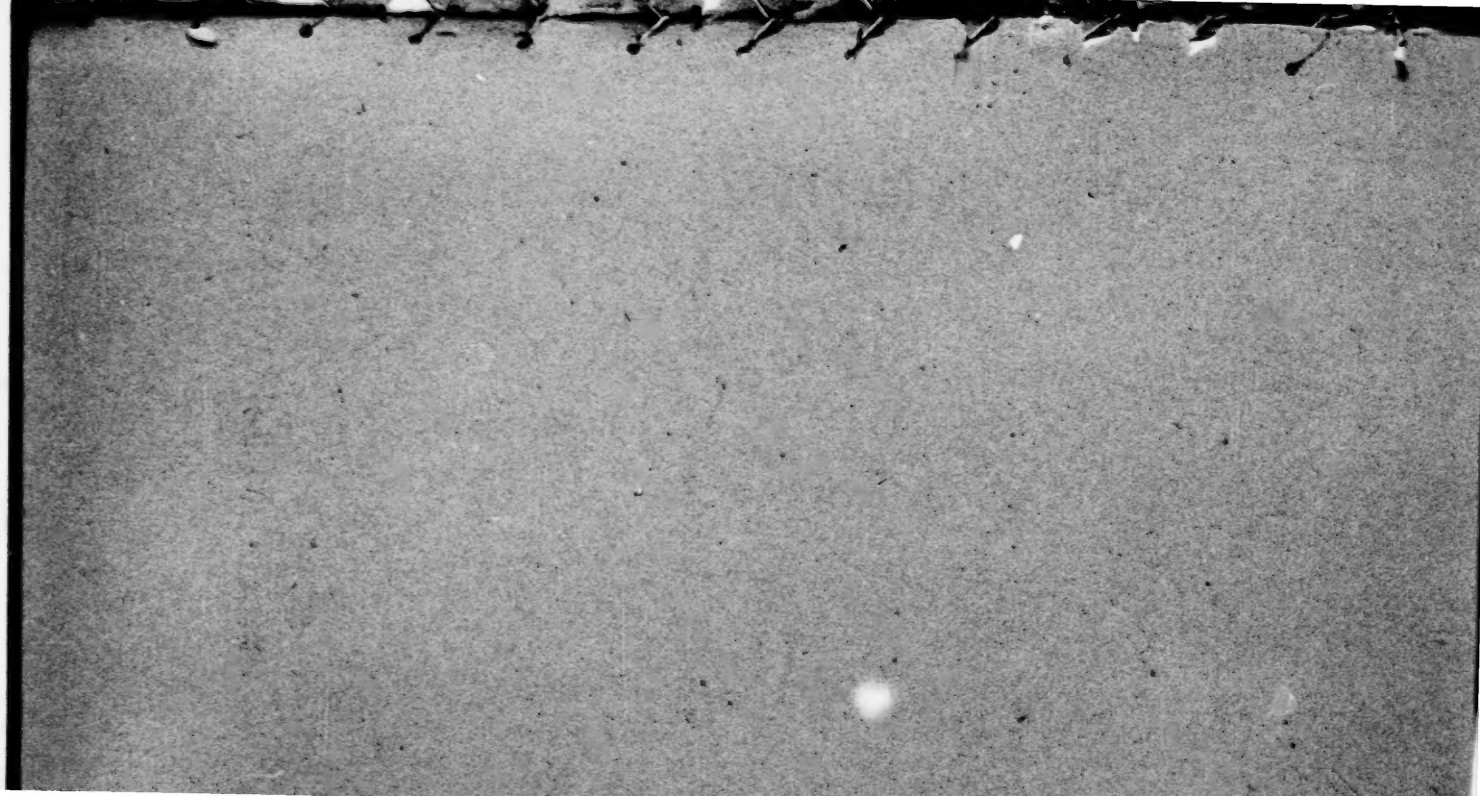
vs.

BAINBRIDGE COLBY, AS SECRETARY OF STATE OF THE UNITED STATES, AND A. MITCHELL PALMER, AS ATTORNEY GENERAL OF THE UNITED STATES.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 6, 1920.

(27,929)



(27,929)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 572.

CHARLES S. FAIRCHILD, APPELLANT,

vs.

BAINBRIDGE COLBY, AS SECRETARY OF STATE OF THE UNITED STATES, AND A. MITCHELL PALMER, AS ATTORNEY GENERAL OF THE UNITED STATES.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 11, 1920.

Court of Appeals of the District of Columbia.

No. 3432.

CHARLES S. FAIRCHILD, Appellant,

vs.

BAINBRIDGE COLBY, Sec'y., &c., et al.

a Supreme Court of the District of Columbia.

No. 38035. In Equity.

CHARLES S. FAIRCHILD, Complainant,

vs.

BAINBRIDGE COLBY, as Secretary of State of the United States, and A. MITCHELL PALMER, as Attorney General of the United States, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Bill for Injunction.*

Filed July 7, 1920.

In the Supreme Court, District of Columbia.

No. 38035. Equity.

CHARLES S. FAIRCHILD, Complainant,

against

BAINBRIDGE COLBY, as Secretary of State of the United States, and A. MITCHELL PALMER, as Attorney General of the United States.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the District of Columbia:

Charles S. Fairchild brings this bill of complaint for himself and on behalf of the members of the American Constitutional League,

against the defendants above named, and respectfully shows unto this Honorable Court:

I. Complainant is a citizen and resident of the State of New York, and that the defendant, Bainbridge Colby, is a citizen of the State of New York and a resident of Washington in the District of Columbia and is Secretary of State of the United States; and that the defendant A. Mitchell Palmer is a citizen of the State of Pennsylvania and a resident of Washington in the District of Columbia and is Attorney General of the United States.

II. That the said association is composed of citizens of the States of Arkansas, Massachusetts, Missouri, New Jersey, New York, Pennsylvania, Rhode Island and Virginia, and has an office in the city of New York and also in the city of Washington in the Dis-
2 trict of Columbia. That they are taxpayers in their respective States and each of them, with one exception, has the right to exercise the elective franchise therein. The said League was organized in the year 1917 for the following purpose: to "Uphold and Defend the American Constitution against all Foreign and Domestic Enemies." Since then it has been engaged in an active campaign in the United States for the diffusion of knowledge as to the fundamental principles of the American Constitution and especially that which gives to each State the right to determine for itself the question as to who should exercise the elective franchise therein.

The question involved in this suit is one of common or general interest to all the members of said association and they constitute a class so numerous as to make it impracticable to bring them all before the Court, and this complainant therefore sues for the whole class.

III. That this is a suit in equity of civil nature and arises under the Constitution and laws of the United States, especially under Section Four of Article Four and under Article Five of the Constitution, and Articles Nine and Ten of the Amendments to the Constitution. It is for the purpose of enjoining the defendant from issuing a proclamation declaring the ratification of the so-called Suffrage Amendment in reference to the right of suffrage within the several States of the United States.

IV. And in support of its bill the complainant alleges as follows:

The State of Virginia was settled by subjects of the British Crown in the year 1608.

The State of Massachusetts was settled by subjects of the British Crown in the year 1620.

The State of Rhode Island was settled by subjects of the British Crown in the year 1636.

The State of New Jersey was settled by subjects of the British Crown in the year 1682.

3 The territory now comprising the State of New York was ceded in 1664 to the British Crown and was thereafter settled by subjects of the said Crown.

Said colonists from the beginning exercised and enjoyed the inherent right of self-government in the management and control of their own affairs as a community, and especially in the regulation of

suffrage in the various elections which were from time to time held by them for the selection of officers to administer their civil institutions.

V. In consequence of the assertion by the colonists of said several States that they of right possessed full legislative powers in all matters relating to internal affairs of said colonies and the denial thereof by Great Britain, the said colonies in 1776 severed their connection with Great Britain and abrogated their allegiance to the British Crown.

The Representatives of the United States of America in General Congress assembled did on the Fourth day of July, 1776, declare their independence and thereupon the said several colonies became free and independent sovereign States, and succeeded to those public rights belonging by prerogative to the British Crown and exercised by Parliament that in any way pertained to the government and affairs of said States, and particularly to the exercise of the elective franchise.

VI. That each of said States severally maintained the right of exercising complete legislative powers over its internal affairs with its existence as a free, independent and sovereign State and at the conclusion of the war its freedom and independence were acknowledged by Great Britain in the Treaty of Peace signed at Paris, September 3, 1783. They joined with the other several States in a league of friendship but did not surrender any legislative power over their internal affairs and civil institutions.

VII. By the ratification of the Constitution of the United States by the ninth State on June 21, 1788, the United States of
4 America under the Articles of Confederation ceased to exist, and the United States of America under the Constitution of the United States came into being. And the said Constitution of the United States was ratified by said several States. Each of said States thereby became a sovereign State of the United States under the said Constitution. And said act of ratification by the people of said States was in good faith, and with full assurance that said State and the people thereof relinquished only such portion of sovereign power as was necessary and essential for the creation and establishment of a limited national government for the purpose of, and with only the powers enumerated, in the several articles of the said Constitution, and that all other powers not delegated nor prohibited to the several States were reserved to the said several States and to the sovereign people thereof. The several conventions of the said States at the time of adopting the Constitution of the United States, and especially the conventions of Massachusetts, New York, Pennsylvania and Virginia, expressed the desire in order to prevent the misconstruction or abuse of the powers of the United States Government, that further declaratory and restrictive clauses should be added. Said Constitution would not have been ratified nor gone into effect had it not been for the general understanding on the part of the people of the several States, and especially the States last mentioned, that certain limitations of powers of the new Government created by said Constitution should be expressed in amend-

ments thereto, which should state the fundamental rights of said States and of the people thereof and should operate as permanent limitations upon the powers of the said general Government.

VIII. In accordance with said understanding and in compliance with the desire expressed by the said conventions, the Congress of the United States, begun and held on the Fourth day of
5 March, 1789, adopted a joint resolution, in which after reciting the action of the several conventions hereinbefore alleged, it proposed ten certain articles of amendment to the said Constitution, which said amendments were in the nature of a bill of rights, declaring the fundamental principle that the powers of the Federal Government created by said Constitution were not unlimited, but were confined to those expressed in the Constitution itself as limited by the bill of rights formed by the said several Constitutional Amendments. The Ninth and Tenth Articles of said Amendments are as follows:

IX. "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

X. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

IX. The complainant is advised and therefore avers that the Constitution of the United States does not delegate to the Government of the United States, nor to the people of the United States, any power to regulate the elective franchise with regard to the internal affairs of said several States of the American Union, nor is said power with respect to the internal affairs of the said States prohibited by the said Constitution to the said States, but is expressly reserved to said States, respectively and to the sovereign people thereof. And further, that neither the power with respect to the elective franchise of said States, nor the discretion in the exercise thereof, can be surrendered or transferred effectively to bind the people of said States and their posterity without an explicit and authentic act of all the people of said States.

X. In and by Section Four, Article Four, of the Constitution of the United States, it is provided that "The United States shall
6 guarantee to every State of this Union a republican form of government." It is an essential part of a republican form of government of such State that it shall regulate the exercise of the elective franchise by the citizens thereof with reference to the internal affairs and government of said States.

XI. The State of Arkansas was admitted in the Union of the United States in the year 1836. The State of Missouri was admitted in the Union of the United States in the year 1821. Both these States applied for admission to the Union of the United States upon the basis and faith of the Ninth and Tenth Amendments to the said Constitution which are hereinbefore set forth, and retained for themselves, severally, the right of local self-government and especially the right to regulate the exercise of the elective franchise in all elections to be held within said States, and particularly for the officers of the State governments thereof and for their respective legislatures.

XII. The Constitution of the State of Missouri provides and has for over thirty years provided as follows:

"Article II, Section 3. We declare, That Missouri is a free and independent State, subject only to the Constitution of the United States; and as the preservation of the States and the maintenance of their governments are necessary to an indestructible Union, and were intended to coexist with it, the Legislature is not authorized to adopt nor will the people of this State ever assent to any amendment or change to the Constitution of the United States which may in any wise impair the right of local self-government, belonging to the people of this State."

XIII. Complainant is advised and therefore avers that the power exercised by Congress in enacting the said Joint Resolution, pretending to submit thereby to the legislatures of the several States of the United States the so-called Suffrage Amendment, as aforesaid, was not delegated to Congress by the provisions of Article V of the Constitution of the United States, and the exercise by Congress of the power to enact such joint Resolution, as aforesaid, was a proceeding unconstitutional and void; and further, that the proposal of the so-called Suffrage Amendment as aforesaid, is not a proposal of an amendment to the Constitution of the United States within the intent, purview, and scope of Article V of the Constitution of the United States, but is an unconstitutional and revolutionary proposal to the legislatures of the several States of a revision and addition to the said Constitution, that is destructive of the fundamental principles thereof and of the Government established thereby, under the form and guise of a proposal of a valid amendment to the Constitution of the United States and under the form and pretense of complying with constitutional procedure; and further, that the proposal of the so-called Suffrage Amendment, for the reasons aforesaid, and otherwise, was unconstitutional, inoperative and void.

7

XIV. Although the proposal of said last mentioned amendment to the Constitution of the United States, as hereinbefore averred, was unconstitutional, inoperative and void, yet, nevertheless, the legislatures of thirty-four States of the United States have gone through the form of ratifying the same, and the said several thirty-four States have caused their several pretended ratifications to be certified to the Secretary of State of the United States. The facts as to West Virginia are hereinafter more specifically stated.

XV. The governments of the said several States now composing the United States of America are, and each of them is, republican in form, and each of them has from the beginning of the Union exercised the power to regulate the elective franchise within said State; said power was recognized in Section II, Article 1, of the Constitution of the United States, in which it is declared that the electors in each State of the House of Representatives of the United States shall have the qualifications requisite for electors of the most numerous branch of the State Legislature. It was again recognized by the Congress of the United States and by the people of the several States in and by the proposal of the Seventeenth Article

8

of Amendment to said Constitution, which was declared to have been ratified in a proclamation by the Secretary of State, dated May 21, 1913. This provides that the electors of Senators in "each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature."

XVI. In pursuance of the said right of the people of each State to regulate the government of said State and the administration of its internal affairs, the people of each of the said States have adopted by popular vote written constitutions, in which among other things, the manner in which the legislature of each State shall be constituted is prescribed. In several of said States, particularly in the States of Maine, Ohio, Massachusetts, Maryland, Oklahoma, Colorado, California, Washington and others, it is provided in various forms of expression, but to substantially the same effect, that a certain number, varying in the different States, of the electors thereof, shall have the right by petition to require that any act of the legislature thereof (or, as in some, any law passed by the legislature thereof) shall be submitted to the vote of the electors of said State respectively, and that said act or law, after the filing of such petition within the required number of days shall be inoperative and of no effect (or, as in some, shall be inoperative after having been rejected at the polls by a majority of the electors voting thereon). The recent decision by the Supreme Court of the United States declaring unconstitutional such provisions for referenda upon Federal
9 amendments overlooked the fact that the intent and purpose are more vital than wording, and that, as shown by the official letter of transmittal of the original Constitution, directing that it should be submitted to conventions in each State chosen by the people thereof, and the decision of Justice Marshall in the case of McCulloch vs. Maryland, in which he declared that the Constitution was not submitted to the States but to the people, evidently the purpose was to obtain the will of the people by the best possible means, which was at that time through legislatures which were willing to represent the people in the matter of altering their own law.

In each of the States of the Union except Delaware, it is provided by the Constitution thereof that no amendment to such Constitution shall be valid unless the same is submitted to the electors of said State for their approval at an election regularly held, and is approved by them upon such election.

XVII. In certain of the States, the legislatures of which have adopted resolutions purporting to ratify said Suffrage Amendment—to wit, in the States of Wisconsin, Ohio, Pennsylvania, New Jersey, Massachusetts, Nebraska, North Dakota, Texas, Missouri, Arkansas and Maine, the right of citizens to vote was restricted by the several constitutions of said States to citizens of the male sex, and the several Constitutions of said last mentioned States conferred no power upon the legislatures of said States respectively to amend the Constitutions of such States, but require that in all cases a proposed amendment to such Constitution must be submitted to the vote of the people of said States respectively. Nevertheless the legislatures of said States, in violation of the Constitution thereof, failed, and refused to sub-

mit to the vote of the people of such State the said Suffrage Amendment which purports to and would if enforced alter the con-
10 stitution of said State without the consent of the people of the said States respectively as required by their respective constitutions. In the States of Ohio, New Jersey, North Dakota, Nebraska, Missouri, Massachusetts, Maine, West Virginia and Texas, a proposition to amend the constitution of said States respectively so as to give to women the right to vote, was submitted to the vote of the people of said States respectively at divers times during the six years last past, and was in each case defeated by the vote of the people of said States respectively.

XVIII. (1) In addition to the 34 States hereinbefore referred to the executive officers of which have respectively certified to the defendant that the legislatures of the said States have ratified the said Suffrage Amendment, the defendant herein named has received such a certificate purporting to come from the proper officer of the State of West Virginia. On the first day of March, 1920, the said amendment was voted upon by the Senate of West Virginia, and was defeated. On the third day of March, a motion to reconsider the vote by which the same was defeated was made, and was defeated. Under Rule 52 of the West Virginia Senate no measure once defeated and then reconsidered can be acted upon during the session. Under Rule 69 of the West Virginia Senate a vote of two-thirds of the Senate is required to suspend any rule. A provision in the Constitution of said State requires a two-thirds vote to expel a member. Nevertheless, on the tenth day of March, 1920, the Senate of said State by a bare majority voted to unseat and expel Senator A. R. Montgomery, who was a member of the said Senate. Thereupon the said Senate, without suspending Rule 52, hereinbefore alleged, attempted again to act on the said Suffrage Amendment, and passed a resolution purporting to ratify it by a vote of 15 in
11 favor and 14 against. Said Senator Montgomery was opposed to the said resolution, and would have voted against it had he been allowed to do so. Another section of the Constitution of West Virginia provides that any Senator or Delegate who removes from the County or District for which he has been elected during his term of office, shall thereby lose his seat. A certain Raymond Dodson, one of the Senators from the Fourth Senatorial District of that State, from which he had been elected, removed from the County of Roane in which he had resided and which formed a part of that district, removing during the year 1919, and had taken up his residence in the County of Kanawha, where he still resided at the time he was recorded as voting in favor of said resolution. The respective pertinent sections of the Constitution of West Virginia and of the rules of her Senate are filed herewith as an exhibit marked "Complete Exhibit, Constitution, and Rules of the Senate, of West Virginia" and prayed to be considered a part hereof. The complainant is advised and alleges that the said resolution of ratification so purporting to have been passed by the Legislature of West Virginia, was not in fact passed by the Senate or by the Legislature of that State.

XVIII. (2) The complainants are advised and believe and therefore aver that while the Legislature of each State is constituted by and under the Constitution of such State, and only has legal or constitutional existence in so far as it conforms to such Constitution, yet the power of any legislature so constituted to ratify amendments to the Constitution of the United States when duly proposed by the Congress is derived from Article V of the Constitution of the United States, and being so derived is to be regarded as having been
12 granted to such legislature by the people of the United States. Every citizen of the United States of whatever State he may be a citizen, and particularly every citizen of the State of West Virginia, is entitled to have the question of ratification of an amendment to the Federal Constitution submitted to and voted upon by all the legally and constitutionally elected and duly qualified members of the legislature of that State present and offering to vote, and by none other than such duly elected and qualified members of the legislature; and the complainants believe and aver that the said amendment has not been ratified by the vote of all such members, but that as hereinbefore shown, the Senate of West Virginia at the time of its so-called ratification of said amendment had been depleted and also added to, in each case contrary to the fundamental laws of its creation, and that its established rules of procedure had been illegally and unconstitutionally violated and that consequently its alleged act under and in pursuance of Article V of the Constitution of the United States is not the act of a legislature of a State as therein mentioned but is a mere nullity.

XIX. Under the laws of Arkansas, Massachusetts, Missouri, New Jersey, Pennsylvania, Rhode Island and Virginia the right to exercise the elective franchise is not conferred upon citizens of the female sex. In those States the number of women who are citizens is about the same as that of men. The addition to the electorate of that great number of voters would nearly double the expense of the elections which are held from time to time in said States and would impose in each State a heavy financial burden upon the persons on whose behalf this bill is filed, who are severally taxpayers thereof and would be an injury to them.

13 XX. Under the Constitutions and the laws of the several States mentioned in the next preceding Article and also under the Constitution and laws of the State of New York, the several provisions of the Constitutions thereof may be amended from time to time by the people of said States. If the said Suffrage Amendment to the Constitution of the United States should go into effect and operation this right now inherent in said States and the citizens and electors thereof will be divested of one of the most important portions thereof, to wit, the regulation of the elective franchise, to the great injury of complainant and his associate members for whom he brings this suit.

XXI. Under the laws of the United States a woman who is not a citizen thereof becomes immediately a citizen upon her marriage to a person who is a citizen thereof without any required period of residence nor any examination as to her qualifications for citizen-

ship. In the States mentioned in the preceding Article there are many such women who do not read or speak the English language and are not familiar with our institutions and many of whom are opposed to such institutions and desire to subvert the same. The addition of these persons to the electorate which is proposed by the said Suffrage Amendment would work grievous injury and impose a heavy financial burden upon the persons on whose behalf this bill is filed who are severally taxpayers in the States of which they are respectively citizens.

XXII. The persons on whose behalf this bill is filed, who are citizens of the States of Arkansas, Maryland, Massachusetts, Missouri, New Jersey, Pennsylvania, Rhode Island, Virginia and West Virginia, are respectively entitled to the right of suffrage at all elections held under the Constitutions and laws of their re-
14 spective States, and such right is valuable and is protected by law. Each of said citizens by virtue of his said Constitutional and legal right to vote participates in the government of the State on equal terms with the other qualified electors thereof and bears his due proportionate share of responsibility for the election of members of the legislative, executive and judicial branches of his State government and his municipal and other local officials, and for the approval or disapproval of all such measures, whether Constitutional amendments, municipal charters, public loans or other propositions that may be from time to time submitted to the qualified electors of such State or the subdivisions thereof, and each of said complainants has therefore an interest that his vote at all such elections be accorded its due weight, and not be subject to be nullified or rendered ineffective by the illegal or unconstitutional addition to the electorate of such State of any persons or classes of persons who are not entitled under its Constitution and laws or under the Constitution of the United States, and laws enacted in pursuance thereof to vote. And the effect of the threatened action of the defendant in proclaiming as having been ratified the so-called Suffrage Amendment, should one more State Legislature ratify the same, without regard to the illegality and nullity of the alleged ratifications by West Virginia and Missouri, and without regard to the nullity of the resolutions of the Congress proposing such Amendment, will be to diminish and impair the value, responsibility and dignity belonging to the right of suffrage possessed by each of the said persons on whose behalf this bill is filed.

XXIII. The defendant, the Secretary of State of the United States, has publicly declared in response to requests from various citizens and associations thereof, that he has no power under
15 the laws of the United States to examine into the validity of any acts of ratification purporting to have been adopted by the several States, and has declared further that upon receiving from the Secretary of State of any one additional State of the United States, a certificate that the said Suffrage Amendment has been ratified by the Legislature thereof, he, the defendant, will issue a proclamation declaring that the said Suffrage Amendment has been ratified by a sufficient number of States, and has become valid to all

intents and purposes as a part of the Constitution of the United States.

XXIV. Complainant is advised and therefore avers that the power exercised by each of the legislatures of the several States of the United States in enacting an alleged ratification of the so-called Suffrage Amendment, as aforesaid, was not delegated to the legislatures of the several States and that the enactment by them respectively of alleged ratification of the so-called Suffrage Amendment by each of the legislatures of the several States, as aforesaid, was not a ratification of an amendment to the Constitution of the United States within the intent, purview and scope of Article V of the Constitution of the United States, but was an unconstitutional and revolutionary proceeding in reference to a revision of and addition to the Constitution of the United States that is destructive of the fundamental principles of said Constitution and of the government established thereby under the form and guise of a ratification of a valid amendment to the Constitution of the United States, and under the form and pretense of complying with constitutional procedure; and further, that the alleged ratification of the so-called Suffrage Amendment by each of the legislatures of the several
16 States, for the reasons aforesaid, and otherwise, was unconstitutional, inoperative and void.

XXV. And complainant is advised and therefore avers that the Congress of the United States and the Legislatures of the several States of the United States are the representatives and agents of the people of the United States in proposing and ratifying amendments to the Constitution within the intent, purview and scope of Article V of the Constitution of the United States; and within the intent, purview and scope of the original delegation of powers to the people of the United States under the Constitution of the United States; and that the alleged proposal by Congress, as aforesaid, and the alleged ratification by the legislatures of the several States, as aforesaid, were not within the scope of the original delegation of powers by the people of the United States, and were not within the power and authority of Congress and the legislatures as agents of the people of the United States or of the several States; and further, that the Congress of the United States and the legislatures of the several States as aforesaid, are neither the judges of their respective powers nor of the limitations thereof under the Constitution of the United States.

XXVI. The Governor of the State of Maryland submitted the proposal of the so-called Suffrage Amendment aforesaid to the Legislature of the State of Maryland. Such Legislature refused to adopt any resolution in alleged ratification of the so-called Suffrage Amendment to the Constitution of the United States, and refused to entertain the proposal of said amendment as a valid proposal of amendment. And the State of Maryland has ever asserted and now asserts that the proposal of the so-called Suffrage Amend-
17 ment is not a valid proposal of an amendment to the said Constitution, and that the Legislature of the said State and the legislatures of the other States composing the Federal Union

have no power of their own to ratify or approve the said amendment as a valid amendment to the Constitution of the United States. And the people of each of the States of Massachusetts, New Jersey, Pennsylvania and Missouri, when a proposed amendment to the Constitution of said States was submitted for adoption to popular vote aforesaid, respectively rejected the same.

XXVII. (1) Although the proclamation by the Secretary of State of the United States will not be valid in fact or law, yet it will upon the face thereof, under the Great Seal of the United States, be *prima facie* valid, and will receive consideration and be trusted as authority in many of the States of the United States in making the provision required by law in reference to the general election which is to be held in the several States on the first Tuesday in November next. It will produce great confusion and be the cause of irreparable injury if the validity of such threatened proclamation should remain in doubt pending the making of a provision for the said election so to be held, and especially in those States whose constitutions severally grant the right of the exercise of the elective franchise in State elections only to the male citizens of said States having certain other qualifications defined by said States respectively, and not to the female citizens of such States. The States of the United States whose constitutions so provide are as follows: Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, New Jersey, New Mexico, North Dakota, North Carolina, Ohio,
18 Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, West Virginia, Minnesota, Mississippi, Vermont, New Hampshire and Wisconsin. The various officers of election who under the constitution of said last mentioned States are charged with the duty of making provision for the holding of such election, and amongst other things for the registry of persons entitled to vote, are required by the constitutions of said States to take oath to support the constitution thereof.

Although the threatened proclamation of the ratification of said amendment would not be conclusive as to the validity of such ratification or of the said amendment, nevertheless the effect thereof will be to cause election officials in States under whose constitution the suffrage is confined to persons of the male sex, including those of which many of the persons on whose behalf this suit is brought, are citizens, voters and taxpayers, as hereinbefore stated, to proceed to accept as qualified voters in the next ensuing elections great numbers of persons of the female sex not qualified by the laws and constitutions of such States respectively or by the laws and Constitution of the United States to vote; and the ballots cast by such persons will be indistinguishable from the ballots cast by the duly qualified voters of such States, including the said persons on whose behalf this suit is brought, and the said action of the Secretary of State will cause irremediable mischief in that the ensuing elections for all State officers to be chosen in such States respectively and for Senators and Representatives in Congress and for electors for President and Vice-President of the United States from such States will in fact

be open to the participation of a great number of persons not legally or constitutionally qualified as electors, and wishes of a ma-
19 jority of the qualified electors will not then or thereafter be ascertained or ascertainable, and the said elections in all such States will be invalid and void; and the rights of persons on whose behalf this suit is brought, to vote at such elections and to have their votes given effect in ascertaining the results thereof will be impaired or destroyed, and such persons will thereby in effect be deprived of their right to vote at such elections, and of their right as free citizens to the due holding of such elections and the choice of officers, members of the Congress and Presidential electors in a legal and constitutional manner.

XXVII. (2) The said Suffrage Amendment contains the following language:

"Congress shall have power to enforce this article by appropriate legislation."

On May 4, 1920, a force bill (S. 4323) was introduced by Senator Watson, of Indiana, providing a fine of five hundred dollars or one year's imprisonment for any person who refuses to allow women to vote, "any constitution, law, custom, usage or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding."

If the above measure should be passed, the second mentioned defendant, A. Mitchell Palmer, as Attorney General of the United States, would be empowered and required by law to enforce the provisions of said act, and as hereinbefore shown, to the great injury of the complainant and of the members of the association for whom he brings this suit.

XXVIII. Complainant is informed and believes, and therefore avers that in two of the States which have purported to ratify the said Suffrage Amendment, namely, Arkansas and New Hamp-
20 shire, no resolution ratifying said Amendment was passed in both houses of the Legislatures of either of said two States; but that separate and distinct resolutions were acted upon by the two Houses, and that since a resolution must pass both Senate and House of Representatives of said Legislatures, the resolutions which were passed by only one house each are null and without legal effect.

XXIX. Article V of the Constitution of the United States declares that "Congress whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution," etc. The vote by which said Suffrage Amendment was purported to have been passed was in the Senate of the United States only fifty-six, or eight less than two-thirds of the entire membership of that body. In three places in the Constitution of the United States where two-thirds of a *quorum* are signified, the word "present" is used. In the decision recently given by the Supreme Court of the United States, a former decision was upheld in which the words "two-thirds," as used in Article V, meant two-thirds of a quorum; but complainant is informed and believes, and therefore avers that the ruling was based solely upon the trend of precedent of the State Supreme

Courts, and that of the six State decisions quoted, five are directly contrary to the decision of the Supreme Court of the United States which based its decision thereon.

XXX. In and by Article II, Section 32 of the Constitution of said State of Tennessee it is provided that

"No convention or General Assembly shall act upon any amendment of the Constitution of the United States proposed by Congress to the several States, unless such convention or General Assembly shall have been elected after such amendment has been submitted."

21 The Legislature of Tennessee now in existence was elected by the people of said State in the year 1918, before the proposed Suffrage Amendment had been proposed by the Congress or submitted to the Legislatures of the several States. It therefore has no power to act upon said Amendment; and it is not now in session. Nevertheless the Governor of said State has called a special session of said Legislature for the purpose of ratifying said Suffrage Amendment, the same to meet upon August 9, 1920. If said special session should pass a resolution purporting to ratify said Suffrage Amendment the Secretary of State of Tennessee would transmit a certificate thereof to the Secretary of State of the United States, and he would thereupon issue a proclamation declaring that the said Suffrage Amendment had been duly ratified by thirty-six States and had become a part of the Constitution of the United States. All of which would be to the great injury of this complainant and the members of the association for whom he sues, and would bring an additional element of uncertainty into the ascertainment of the citizens having the right of suffrage in the various States mentioned in the aforementioned paragraph whose Constitutions do not confer the right of suffrage upon female citizens, and would occasion a multiplicity of suits to test the result of the several elections held in these States, respectively. Whereas in the orderly administration of justice, and in accordance with due process of law, the validity of the ratification of said Amendment should be determined by a competent judicial tribunal before the elections, which may then be held and conducted in accordance with the decision of such tribunal.

If the election is held without any judicial determination of the question hereinbefore mooted, as to the validity of such so-called Suffrage Amendment, the validity of any election which may
22 be held pending the determination of the controversy aforesaid will respecting the same become a source of dispute and will lead to a multiplicity of suits. All of which would be to the irreparable injury and damage of the people of the States of which the members of said association are respectively citizens and of this complainant and of the people of the United States.

Forasmuch as complainant is without remedy at law and its only protection in the premises must arise from the equitable jurisdiction of this Court, wherein is vested the duty and power to interpret and enforce the provisions of the Constitution of the United States, and to the end that it may obtain relief to which it is by right in equity entitled.

Wherefore, the complainant respectfully prays this Honorable Court to grant unto it a writ of subpœna, to be directed to the said Bainbridge Colby, as Secretary of State of the United States, and A. Mitchell Palmer, as Attorney General of the United States, the defendants herein named, requiring them to appear and answer hereto, but not under oath, the answer under oath being hereby expressly waived. That the so-called Suffrage Amendment be declared unconstitutional and void. That the defendant, Colby, his assistants, subordinates and agents be enjoined and restrained, both pending this suit and also by the final decree therein, from issuing any proclamation declaring that the said so-called Suffrage Amendment has been ratified or that it has become a part of the Constitution of the United States. That the defendant, Palmer, his assistants, subordinates and agents be enjoined and restrained, both pending this suit and also by the final decree therein, from enforcing said Amendment. And that complainant may have such other and
23 further relief as to this Court may seem just and equitable in the premises. And that the rule to show cause issue direct to the defendants demanding them to show cause, if any they have, why the restraining order should not issue.

ALFRED D. SMITH,
EVERETT P. WHEELER,
Att'ys for Pl'ff.

24 *Complete Exhibit, Constitution and Rules of the Senate of West Virginia.*

The Constitution.

Article Six, Section Twelve:

"No person shall be a Senator or Delegate who has not for one year next preceding his election been a resident within the District or county from which he is elected; and if a Senator or Delegate remove from the District or county for which he was elected, his seat shall be thereby vacated."

Article Six, Section Twenty-five:

"Each House may punish its own members for disorderly behavior, and with the concurrence of two-thirds of the members elected thereto, expel a member, but not twice for the same offense."

The Rules of the Senate.

Rule Fifty-two:

"The question, being once determined, must stand as the judgment of the Senate, and cannot during the session be drawn again into debate unless reconsidered, and it shall be in order for any member voting with the prevailing side to move a reconsideration of the same within two succeeding business days."

Rule Sixty-nine:

"No standing rule or order of the Senate shall be rescinded or changed without one day's notice being given of the motion therefor; and no rule shall be suspended except by a vote of two-thirds of all the members of the Senate present."

25 Paul Morris, after being first duly sworn according to law, deposes and says that he is the agent of the plaintiff, who is absent from the jurisdiction, and knows the contents hereof; that the facts herein stated of his own knowledge are true and that those stated upon information and belief he believes to be true.

PAUL MORRIS.

Sworn and subscribed to before me this 7th day of July, A. D. 1920.

[SEAL.] GEO. P. NEWTON,
Notary Public, District of Columbia.

ALFRED D. SMITH,
Att'y for Pl'ff.

26 *Memorandum*

July 7, 1920.—Rule to show cause, issued.

Return to Rule to Show Cause.

Filed July 13, 1920.

* * * * * * *

For a return to the rule to show cause why an injunction *pendente lite* should not issue in this cause, the defendants Bainbridge Colby, Secretary of State of the United States, and A. Mitchell Palmer, Attorney General of the United States, say as follows:

1. The bill of complaint sets forth no equity whereon to ground the relief prayed or any relief whatever.

2. The bill of complaint herein presents no emergency calling for injunctive relief.

3. For other and further reasons apparent upon the face of the said bill of complaint.

WM. L. FRIERSON,
The Solicitor General;
JOHN E. LASKEY,
Attorney of the United States
in and for the District of Columbia,
For the Defendants.

Motion to Dismiss.

Filed July 13, 1920.

* * * * * * *

Now come Bainbridge Colby, Secretary of State, and A. Mitchell Palmer, Attorney General of the United States, and move the Court to dismiss the bill of complaint herein, for the causes following:

27 1. Because the plaintiff, by his bill, discloses no interest or privity which entitles him to maintain the same or obtain relief thereby.

2. Because there is no equity in the bill.

3. For other and further reasons apparent upon the face of the bill of complaint.

WM. L. FRIERSON,
The Solicitor General;
JOHN E. LASKEY,
Attorney of the United States in and for the District of Columbia,
For the Defendants.

Final Decree.

Filed July 14, 1920.

* * * * * * *

This cause came on at this term to be heard, pursuant to stipulation in open court, upon the motion to dismiss the bill as well as upon the rule to show cause why a preliminary injunction should not be issued as prayed in the said bill; Whereupon, the said motion to dismiss is granted and the said rule is discharged.

It is, therefore, this 14th day of July, A. D. 1920,

Adjudged, ordered and decreed, that the bill of complaint herein be, and the same hereby is, dismissed, and that the defendants recover of the plaintiff their costs of suit.

By the Court:

JENNINGS BAILEY,
Justice.

28 From the foregoing decree the plaintiff notes an appeal to the Court of Appeals and the penalty of the bond and undertaking on appeal is fixed at one hundred dollars, with leave to the plaintiff to deposit fifty dollars cash in lieu thereof.

By the Court:

JENNINGS BAILEY,
Justice.

Form approved.
ALFRED D. SMITH,
EVERETT P. WHEELER,
Of Attorneys for Plaintiff.

Memorandum.

July 21, 1920. $50 deposited by plaintiff's attorney in lieu of appeal bond.

Assignment of Errors.

Filed July 21, 1920.

* * * * * * *

Now comes the complainant in the above entitled cause and files the following assignment of errors upon which he will rely upon his prosecution of the appeal in the above entitled cause, from the decree made by this honorable court on the 14th day of July 1920.

1. The Supreme Court of the District of Columbia erred in granting the motion made by defendants to dismiss the bill filed in the cause.

2. The said Court erred in holding that the plaintiff by his bill discloses no interest or privity entitling him to maintain the same or obtain relief thereby.

3. The said Court erred in holding that there was no
29 emergency calling for the issue of an injunction therein.

4. The said Court erred in holding that there was no limit to the power to amend the Constitution of the United States granted by the fifth article thereof.

5. The said Court erred in holding that the ninth and tenth amendments to the Constitution of the United States did not limit in any way the power to amend granted in the fifth article thereof.

6. The said Court erred in holding that there was no limit by any implication to the power to amend granted by the fifth article of the said Constitution.

7. The said Court erred in holding that the pending Suffrage Amendment mentioned in the bill, if ratified, would not in any way violate the guarantee of the Republican form of government contained in section 4, article IV, of the said Constitution.

8. The said Court erred in holding that the respective Constitutions of the States of Missouri and Tennessee, mentioned in said bill, were not binding upon the respective legislatures of the said States in any action they might take upon the submission to the States of an amendment of the Constitution of the United States, and that the said legislatures could act upon the same irrespective of any requirements or limitations imposed by the said constitutions of said States respectively.

9. The said Court erred in holding that it had no power to consider or examine the validity of any ratification by any particular legislature of an amendment proposed to the Constitution of the United States.

10. The said Court erred in holding that it had no power to con-

sider the allegations of the bill respecting the action of the
30 Legislature of the State of West Virginia, in respect to the ratification of said suffrage amendment.

11. The said Court erred in holding that it was competent for the majority of the States of the Union, as expressed in the fifth article of the Constitution of the United States, to impress upon the minority of the States forming a part of said Union changes in their respective Constitutions without conformity to the methods fixed by the said State Constitution for making such changes.

12. The said Court erred in holding that there was no equity in said bill.

Wherefore the appellant prays that said decree be reversed and that said Supreme Court for the District of Columbia be ordered to enter a decree reversing the decision of the said court in said cause.

ALFRED D. SMITH,
EVERETT P. WHEELER,
Attorneys for Appellant.

Designation of Record.

Filed July 21, 1920.

* * * * * * *

Bill of Complaint.
Memorandum of rule.
Memorandum of return to rule.
Motion to Dismiss.
Final Decree.

ALFRED D. SMITH,
EVERETT P. WHEELER,
Attorneys for Plaintiff.

31 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 30, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 38035 in Equity, wherein Charles S. Fairchild is Complainant and Bainbridge Colby, as Secretary of State of the United States, and A. Mitchell Palmer, as Attorney General of the United States are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 2nd day of August, 1920.

[Seal Supreme Court of the District of Columbia.]

MORGAN H. BEACH,
Clerk.

E. W.

Endorsed on cover: District of Columbia Supreme Court. No. 3432. Charles S. Fairchild, appellant, vs. Bainbridge Colby, sec'y, &c., et al. Court of Appeals, District of Columbia. Filed Aug. 3, 1920. Henry W. Hodges, clerk.

Addition to Record.

Court of Appeals of the District of Columbia, October Term, 1920

No. 3432.

CHARLES S. FAIRCHILD, Appellant,

vs.

BAINBRIDGE COLBY, as Secretary of State of the United States, et al.

Appeal from the Supreme Court of the District of Columbia.

Filed September 16, 1920.

In the Court of Appeals of the District of Columbia.

No. 3432.

CHARLES S. FAIRCHILD, Appellant,

v.

BAINBRIDGE COLBY et al., Appellees.

This stipulation entered into this 16th day of September, 1920, by and between the United States District Attorney, representing the Appellees, and Alfred D. Smith, attorney for the Appellant, whereby it is stipulated and agreed that it was understood that the bill of complaint filed herein should be amended so as to include among the list of States in which the American Constitutional League had members the name of the State of West Virginia, and it is hereby agreed by the United States District Attorney, representing the Appellees, that the same shall be considered as having been incorporated in the said bill for the purposes of this suit.

ALFRED D. SMITH,
Attorney for Appellant.
JOHN E. LASKEY,
United States Attorney, D. C.,
Attorney for Appellees.

[Endorsed:] No. 3432. Charles S. Fairchild, Appellant, vs. Bainbridge Colby, as Secretary of State of the United States, et al. Addition to record per stipulation of Counsel. Court of Appeals, District of Columbia. Filed Sep. 16, 1920. Henry W. Hodges, Clerk.

In the Court of Appeals of the District of Columbia.

October Term, 1920.

No. 3432.

CHARLES S. FAIRCHILD, Appellant,

vs.

BAINBRIDGE COLBY, Secretary of State of the United States; A. MITCHELL PALMER, Attorney-General of the United States.

Motion to Dismiss or Affirm.

Now come the defendants (Appellees) by John E. Laskey, Esquire, Attorney of the United States in and for the District of Columbia, and move the Court to dismiss the appeal herein or to affirm the decree below, or, in the alternative, to affirm the decree below without prejudice to the plaintiff (Appellant) to institute appropriate action or suit with reference to future acts of parties in enforcement of the Nineteenth Amendment to the Constitution of the United States.

1. By public notoriety and by the admission of the plaintiff's brief (Brief, p. 7), it appears that the Secretary of State has proclaimed the ratification of the Amendment, to wit, August 26, 1920, after the bill of complaint was dismissed, wherefore the questions presented by the bill have become moot, as to the defendant the Secretary of State, against whom the only relief sought was an injunction against the proclamation of the ratification.

(*a*) This branch of the motion would seem to be governed by the principle of California v. San Pablo and Tulare R. R., where the Supreme Court said:

"The duty of this Court, as of every judicial tribunal, is limited to determining rights of persons or of property, which are actually controverted in the particular case before it. When, in determining such rights, it becomes necessary to give an opinion upon a question of law, that opinion may have weight as a precedent for future decisions. But the court is not empowered to decide moot questions or abstract propositions, or to declare, for the government of future cases, principles or rules of law which cannot affect the result as to the thing in issue in the case before it."

California vs. San Pablo & Tulare R. R., 149 U. S. 308, 314.

Followed in:

239 U. S. 466, 475, U. S. v. Hamburg-American Steamship Co.

242 U. S. 537, U. S. v. American Asiatic Steamship Co.

(*b*) The probable recurrence of the questions does not take the present case out of the above principle.

As said by the Supreme Court in Commercial Cable Co. vs. Burleson:

"But we are of opinion that these anticipations of possible danger afford no basis for the suggestion that the cases now present any possible subject for judicial action, and hence it results that they are wholly moot and must be dismissed for that reason."

Commercial Cable Co. vs. Burleson, 250 U. S. 306, 362.

The anticipations referred to were that the acts complained of having been wholly unwarranted, might be renewed in future.

2. No decision is required as to the defendant The Attorney General because the sole relief prayed against him is that he be restrained from enforcing the Nineteenth Amendment (Bill, p. 22), while the only allegation of contemplated action (Bill, p. 19) is:

"If the above measure (Senate Bill 4323 providing fine and imprisonment for any person who refuses to allow women to vote) should be passed, the second mentioned defendant, A. Mitchell Palmer, as Attorney General of the United States, would be empowered and required by law to enforce the provisions of said act,"

to the great injury of the complainant and his associates.

3. The appellant's brief concedes that the Secretary of State disclaims power to examine the validity of any State ratification (Brief, p. 9) and no claim is made by the bill or brief of appellant that the actual validity of the Amendment is affected by the ministerial act of the Secretary of State in proclaiming the ratification after official notice from the requisite number of States, wherefore the review sought by the appeal would be confined to the abstract question of the validity of the Amendment.

4. The granting of this motion would not defeat the purpose of appellant (Brief, p. 11) to apply for a review by the Supreme Court during its October Term.

(Signed) JOHN E. LASKEY,
Attorney of the United States in and for the District of Columbia, for Defendants (Appellees).

A. D. SMITH, Esquire,
Attorney for Appellant.

SIR:

Take notice that I have this 21st day of September, 1920, submitted the foregoing motion to the Court of Appeals for its consideration on two days' notice to you.

(Signed) JOHN E. LASKEY,
Attorney of the United States in and for the District of Columbia.

(Statement under Rule XVI follows.)

Statement under Rule XVI, Section 2.

Charles S. Fairchild, a citizen and resident of the State of New York, for himself and persons similarly situated, members of the American Constitutional League, filed a Bill in Equity July 7, 1920, to enjoin the Secretary of State from proclaiming the ratification of the Suffrage Amendment, and prayed also that the Attorney General be enjoined from enforcing Senate Bill No. 4323, should the same become a law, which bill proposes a penalty by fine or imprisonment against any person who refuses to allow women to vote. The bill was filed and dismissed before the thirty-sixth State, Tennessee, had ratified.

The plaintiff's title to maintain the bill is stated to be that he and the class he represents are tax-payers and voters, and women suffrage would increase taxation by the increased cost of elections, and the effectiveness of his vote and that of those he represents would be diminished to the extent of the addition of the votes of women.

The validity of the suffrage amendment is challenged on the ground that the power to amend the Constitution, as originally provided in that instrument, is limited by the bill of rights contained in the first ten amendments; that under the bill of rights the minority states cannot have woman suffrage imposed upon them without their consent; that some of the ratifying legislatures were without power to ratify because chosen by the people before the amendment was proposed; that the West Virginia legislature ratified after it had previously rejected the amendment and defeated a motion to reconsider at the same session; that this was in violation of its rules; that the ratification of the West Virginia legislature was by the votes of a bare majority, although one of the members was disqualified, under the State Constitution, by change of residence, and another was wrongfully expelled and otherwise would have voted against the ratification.

The Court below dismissed the bill of complaint on motion of defendants, because it had not power to enquire beyond the Acts of the legislatures in ratifying, and questioned whether the suit was not premature, and the plaintiff without adequate title or interest to sue.

Endorsed: No. 3432. Charles S. Fairchild, Appellant, vs. Bainbridge Colby, Secretary of State of the United States; A. Mitchell Palmer, Attorney General of the United States, Appellees. Motion to dismiss or affirm. Court of Appeals, District of Columbia. Filed September 21, 1920. Henry W. Hodges, Clerk.

In the Court of Appeals of the District of Columbia.

No. 3432.

CHARLES S. FAIRCHILD, Appellant,

vs.

BAINBRIDGE COLBY et al., Appellee-.

Reply to Motion to Dismiss or Affirm.

Now comes the Appellant and for reply to motion to dismiss or affirm, says:

The questions involved in the above entitled cause are of national and vital importance and that the questions raised therein are not moot.

That it is within the power of the Judicial branch of the Government to require the Appellee, the Secretary of State, to withdraw his proclamation of ratification should it be determined that the ratification were unconstitutional, or should it be determined that the proposed so-called Nineteenth Amendment be not within the power of Congress to propose, or should it be found that it be not a proper amendment within the constitutional provisions.

That if any of these findings should be had by the Court then and in that case the proclamation would be void and of no effect.

That all of these questions are involved in the proceedings pending in this Court and these proceedings should not be dismissed without a full and complete hearing.

ALFRED D. SMITH,
Attorney for Appellant.

Endorsed: No. 3432. Charles S. Fairchild, Appellant, v. Bainbridge Colby, Appellee. Appellant's answer to motion to dismiss or affirm. Court of Appeals, District of Columbia. Filed September 24, 1920. Henry W. Hodges, Clerk.

Court of Appeals, District of Columbia. Filed Sep. 27, 1920. Henry W. Hodges, Clerk.

In the Court of Appeals of the District of Columbia.

No. 3432.

CHARLES S. FAIRCHILD, Appellant,

vs.

BAINBRIDGE COLBY et al., Defendants.

Brief for Appellant in Answer to Motion to Dismiss the Appeal.

First.

The motion is based upon the fact that while the suit was pending in the Court of Appeals of the District of Columbia, the defendant Colby issued a proclamation declaring the Suffrage Amendment mentioned in the Bill to have been ratified and become a part of the Constitution of the United States. This motion apparently assumes that the object of the suit is limited to the election to be held in November, 1920. This is a mistake. If the proclamation referred to is valid and the Amendment in question has become a part of the Constitution of the United States, it will apply not only to the National election to be held in November, but to all elections to be held in the United States for all time to come. No doubt it is desirable that a decision may be had before the November election, but it is far more important that the people of this country should know what has and what has not become a part of the Constitution under which they live and that election officials for all time to come should know how to regulate registration of voters and the reception of ballots.

Second.

The defendant, Colby, had full notice of the pendency of the suit.

The bill was filed July 7th, 1920. The defendants appeared and answered the rule to show cause July 13th, 1920. The decree dismissing the bill was entered July 14th, 1920, and on the same day an appeal was noted to the Court of Appeals. The rule on this subject is stated by Mr. Justice Holmes in Wingert vs. First National Bank, 223 U. S. 670-672.

"No doubt after the filing of a bill for an injunction, defendants proceed at their peril, even though no injunction is issued and if they go on to inflict an actionable wrong upon the plaintiff, will not be allowed to defeat the jurisdiction of the Court by their own act."

To the same effect are,
Garden City Sand Co. v. Fire Brick Co. 260 Ill. 231.
Lewis v. North Kingstown, 16 Rhode Island, 15.

Milkman v. Ordway, 106 Mass. 232, 253, declares the general rule above stated. The Court said:

"The peculiar province of a Court of Chancery is to adapt its remedies to the circumstances of each case as developed by the trial."

Third.

In the case at bar the relief against the Secretary of State that should be granted, is a mandatory injunction requiring him to issue a proclamation rescinding his former proclamation on the subject and declaring that the so-called Nineteenth Amendment, alleged in the bill, is not and has not become a part of the Constitution of the United States.

14 Ruling Case Law, 315, Section 14:

"The power of a Court of Equity to grant a mandatory injunction is generally recognized."

In re Lennon, 166 U. S. 548, the original bill was filed to compel defendant Companies, to continue exchange of business with plaintiff—also a Railroad Company—notwithstanding a strike.
Held that Court had jurisdiction, p. 538,

"But it was clearly not beyond the power of a Court of Equity which is not always limited to the restraint of a contemplated or threatened action, but may even require affirmative action where the circumstances of the case demand it."

In short, it is the duty of the Court to restore the plaintiff to all the rights which he has lost by reason of the erroneous judgment

"Where a judgment or decree of an inferior court is reversed by a final judgment in a Court of Review, a party is in general entitled to restitution of all things lost by reason of the judgment in the lower Court and accordingly the Courts will, where justice requires it, promptly and as far as practicable, place him as nearly as may be in the same condition he stood in previously."
18 Encyc. Pl. & Pr. 872, Sec. 2.
S. P. Ex Parte Morris, 9 Wallace, 605;
Morris v. Cotton, 8 Wallace, 907;
Commonwealth v. Griest, 196 Penn. 396, 409.

There was no doubt a time when the power of the Court to issue a mandatory injunction was questioned, but as was said by Sir George Jessel, in Smith v. Smith, 20 Eq. 500, the power to compel a defendant to do affirmatively an act to which the plaintiff has a right, is now well established and should be exercised with no more

hesitation than the power to restrain him from doing something to the injury of the plaintiff. This is the law, even though the acts were done after the filing of the bill.

Tucker v. Howard, 128 Mass. 361;
Beadel v. Perry, 3 Eq. 465;
2 Story Eq., 14th Ed. Sec. 1181, Note 2.

The court is also referred to the Ninth Point in the principal brief.

Fourth.

The alternative relief asked by the motion made by defendants should not in any case be granted. It is of great public importance that the questions involved in this suit should be judicially considered and decided as soon as practicable. An affirmance without prejudice might and probably would delay a final decision.

Appellant is ready to argue the appeal on the merits at once, if the Court will hear us. But in any case we ask that the Court dispose of the case finally so far as this Court is concerned, and render a final decree, from which either party may appeal to the Supreme Court, which is the tribunal that must finally decide the controversy.

Fifth.

The motion should be denied.

ALFRED D. SMITH,
Attorney for Appellant.
WALDO MORSE,
EVERETT P. WHEELER,
Of Counsel.

Monday, October 4th, A. D. 1920.

No. 3432.

October Term, 1920.

CHARLES S. FAIRCHILD, Appellant,

vs.

BAINBRIDGE COLBY, as Secretary of State of the United States, and A. Mitchell Palmer, as Attorney General of the United States.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and on a motion to dismiss the appeal or affirm the decree which was argued by counsel. On consideration whereof, It is now here ordered, adjudged, and decreed by this Court that the decree of the said Supreme

Court in this cause be, and the same is hereby, affirmed with costs, on authority of Widenman v. Colby.

Per Mr. Chief Justice SMYTH,
October 4, 1920.

Tuesday, October 5, A. D. 1920.

Charles S. Fairchild, Appellant,

vs.

Bainbridge Colby, as Secretary of State of the United States, and A. Mitchell Palmer, as Attorney General of the United States.

On consideration of the motion for the allowance of an appeal to the Supreme Court of the United States in the above entitled cause, submitted by Mr. Everett P. Wheeler, of counsel for the appellant, It is by the Court this day ordered that said appeal be, and the same is hereby, allowed as prayed, and the bond for costs is fixed at the sum of three hundred dollars.

(*Bond on Appeal.*)

Know all men by these presents, that we, Charles S. Fairchild, as principal, and United States Fidelity and Guaranty Company, as surety, are held and firmly bound unto Bainbridge Colby, Secretary of State & A. Mitchell Palmer, Attorney General of the United States in the full and just sum of Three hundred and no/100 dollars, to be paid to the said —— —— certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 5th day of October, in the year of our Lord one thousand nine hundred and twenty.

Whereas, lately at a Court of Appeals of the District of Columbia in a suit depending in said Court, between Charles S. Fairchild and Bainbridge Colby, Secretary of State, and A. Mitchell Palmer, Attorney General of the United States a decree was rendered against the said Charles S. Fairchild and the said Charles S. Fairchild having prayed and obtained an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Bainbridge Colby, Secretary of State, and A. Mitchell Palmer, Attorney General of the United States, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof;

Now, the condition of the above obligation is such, that if the said Charles S. Fairchild shall prosecute said appeal to effect, and answer

all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

CHARLES S. FAIRCHILD, [SEAL.]
By EVERETT P. WHEELER, *Att'y.* [SEAL.]

[Seal of United States Fidelity and Guaranty Company.]

UNITED STATES FIDELITY AND
GUARANTY COMPANY,
By LOUIS L. PERKINS,
Attorney in Fact. [SEAL.]

Sealed and delivered in presence of—
ALFRED D. SMITH.

Approved by—
C. J. SMYTH,
Chief Justice Court of Appeals of the District of Columbia.

[Endorsed:] No. 3432. Charles S. Fairchild, Appellant, vs. Bainbridge Colby, as Secretary of State of the United States, and A. Mitchell Palmer, as Attorney General of the United States. Bond on appeal to the Supreme Court of the U. S. Court of Appeals, District of Columbia. Filed October 5, 1920. Henry W. Hodges, Clerk.

UNITED STATES OF AMERICA, *ss:*

To Bainbridge Colby, as Secretary of State of the United States, and A. Mitchell Palmer, as Attorney General of the United States, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein Charles S. Fairchild is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Constantine J. Smyth, Chief Justice of the Court of Appeals of the District of Columbia, this 5th day of October, in the year of our Lord one thousand nine hundred and twenty.

CONSTANTINE J. SMYTH,
Chief Justice of the Court of Appeals of the District of Columbia.

Service acknowledged Oct. 5, 1920.
JOHN E. LASKEY,
Counsel for Appellees.

[Endorsed:] Court of Appeals, District of Columbia. Filed Oct. 5, 1920. Henry W. Hodges, Clerk.

In the Court of Appeals of the District of Columbia.

No. 3432.

CHARLES S. FAIRCHILD, Appellant,

vs.

BAINBRIDGE COLBY et al., Defendants.

Assignment of Errors.

Now comes the appellant in the above entitled cause and files the following assignment of errors upon which he will rely upon his prosecution of the appeal in the above entitled cause, from the decree made by this honorable court on the fourth day of October, 1920.

1. The Court of Appeals of the District of Columbia erred in affirming the decree of the Supreme Court of the District of Columbia which was made July 14th, 1920.

2. The Supreme Court of the District of Columbia erred in granting the motion made by the defendants to dismiss the bill filed in the cause.

3. The Supreme Court of the District of Columbia erred in holding that the plaintiff by his bill, discloses no interest or privity entitling him to maintain the same or obtain relief thereby.

4. The said Court erred in holding that there was no emergency calling for the issue of an injunction therein.

5. The said Court erred in holding that there was no limit to the power to amend the Constitution of the United States granted by the Fifth Article thereof

6. The said Court erred in holding that the Ninth and Tenth Amendments to the Constitution of the United States did not limit in any way the power to amend granted in the Fifth Article thereof.

7. The said Court erred in holding that there was no limit by any implication to the power to amend granted by the Fifth Article of the said Constitution.

8. The said Court erred in holding that the pending Suffrage Amendment, mentioned in the Bill, if ratified, would not in any way violate the guarantee of the Republican form of government contained in Section 4, Article IV of the said Constitution.

9. The said Court erred in holding that the respective Constitutions of the States of Missouri and Tennessee, mentioned in said Bill, were not binding upon the respective legislatures of the said States in any action they might take upon the submission to the States of an amendment of the Constitution of the United States and that the

said legislatures could act upon the same, irrespective of any requirements or limitations imposed by the said Constitution of said States respectively.

10. The said Court erred in holding that it had no power to consider or examine the validity of any ratification by any particular legislature of an amendment proposed to the Constitution of the United States.

11. The said Court erred in holding that it had no power to consider the allegations of the Bill respecting the action of the Legislature of the State of West Virginia in respect to the ratification of said Suffrage Amendment.

12. The said Court erred in holding that it was competent for a majority of the States of the Union, as expressed in the Fifth Article of the Constitution of the United States, to impress the minority of the States forming a part of said Union, changes in the respective Constitutions, without conformity to the methods fixed by the said State Constitution for making such changes.

13. The said Court erred in holding that there was no equity in said Bill.

14. The Court of Appeals for the District of Columbia erred in not rendering a decree, that the defendant, Bainbridge Colby should issue a proclamation declaring that the proposed Amendment to the Constitution of the United States, mentioned in the Bill, has not become and is not a part of the said Constitution and that it cannot become such without the consent of all the States of the Union.

15. The said Court of Appeals for the District of Columbia, erred in not making a decree granting a permanent injunction against the defendant, the Attorney General of the United States, for an injunction restraining him from enforcing such alleged Amendment as prayed in the Bill.

Wherefore, the appellant prays that said decree of the Court of Appeals be reversed and that the Supreme Court of the United States remand the cause to the Supreme Court of the District of Columbia, with directions to enter a decree granting the mandatory injunction against the defendant, the Secretary of State, as specified in the Fourteenth Assignment of Errors, and a permanent injunction against the defendant, the Attorney General of the United States, granting a permanent injunction, as specified in the Fifteenth Assignment of Errors.

ALFRED D. SMITH,
EVERETT P. WHEELER,
Attorneys for Appellant.

(Endorsed:) No. 3432 Charles S. Fairchild, appellant, vs., Bainbridge Colby, et al. Assignment of Errors. Court of Appeals, District of Columbia. Filed Oct. 5, 1920. Henry W. Hodges, Clerk.

In the Court of Appeals of the District of Columbia.

No. 3432.

CHARLES S. FAIRCHILD, Appellant,

vs.

BAINBRIDGE COLBY, as Secretary of State of the United States, and A. MITCHELL PALMER, as Attorney General of the United States.

The Clerk, in preparation of the transcript on appeal to the Supreme Court of the United States, will embrace the following:

1. Record.
2. Addition to Record.
3. Motion to dismiss or affirm.
4. Answer to motion to dismiss or affirm.
5. Brief in answer to motion to dismiss or affirm.
6. Decree.
7. Appeal to Supreme Court of the United States granted and fixing amount of bond.
8. Bond on appeal to Supreme Court of the United States.
9. Citation with acceptance of service.
10. Assignment of errors.
11. This designation.

ALFRED D. SMITH.

(Endorsed:) N. 3432. Charles S. Fairchild, appellant, vs. Bainbridge Colby, as Secretary of State of the United States, et al. Designation of counsel as to record on appeal to Sup. Ct. U. S. Court of Appeals, District of Columbia. Filed October 5, 1920. Henry W. Hodges, Clerk.

Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 11 inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals, as designated by counsel in the case of Charles S. Fairchild, Appellant, vs. Bainbridge Colby, as Secretary of State of the United States, and A. Mitchell Palmer, as Attorney General of the United States, No. 3432, October Term, 1920, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and fix the seal of said Court of Appeals, at the City of Washington, this 5th day of October, A. D. 1920.

[Seal of Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. 27,929. District of Columbia Court of Appeals. Term No. 572. Charles S. Fairchild, appellant, vs. Bainbridge Colby, Secretary of State of the United States, and A. Mitchell Palmer, Attorney General of the United States. Filed October 6th, 1920. File No. 27,929.